United Nations A/66/469

General Assembly

Distr.: General
9 November 2011

Original: English

Sixty-sixth session
Agenda item 77

Nationality of natural persons in relation to the succession of States

Report of the Sixth Committee

Rapporteur: Ms. Jacqueline Kemunto **Moseti** (Kenya)

I. Introduction

1. The item entitled "Nationality of natural persons in relation to the succession of States" was included in the provisional agenda of the sixty-sixth session of the General Assembly pursuant to Assembly resolution 63/118 of 11 December 2008.

2. At its 2nd plenary meeting, on 16 September 2011, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 15th and 29th meetings, on 17 October and on 9 November 2011. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/66/SR.15 and 29).

4. For its consideration of the item, the Committee had before it a note by the Secretariat containing comments of Governments regarding the nationality of natural persons in relation to the succession of States (A/66/178 and Add.1), as well as previous notes by the Secretariat containing comments of Governments on the topic (A/63/113 and A/59/180 and Add.1 and 2).

II. Consideration of draft resolution A/C.6/66/L.18

5. At the 29th meeting, on 9 November, the representative of the Czech Republic, on behalf of the Bureau, introduced a draft resolution entitled "Nationality of natural persons in relation to the succession of States" (A/C.6/66/L.18).

6. At the same meeting, the Committee adopted draft resolution A/C.6/66/L.18 without a vote (see para. 8).

7. Also at the same meeting, the representatives of France and the Russian Federation spoke in explanation of position after the adoption of the draft resolution (see A/C.6/66/SR.29).

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III. Recommendation of the Sixth Committee

8. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Nationality of natural persons in relation to the succession of States

The General Assembly,

Having examined the item entitled "Nationality of natural persons in relation to the succession of States",

Recalling its resolution 54/112 of 9 December 1999, in which it decided to consider at its fifty-fifth session the draft articles on nationality of natural persons in relation to the succession of States prepared by the International Law Commission,

Recalling also its resolution 55/153 of 12 December 2000, the annex to which contains the articles on nationality of natural persons in relation to the succession of States,

Recalling further its resolutions 59/34 of 2 December 2004 and 63/118 of 11 December 2008,

Taking into consideration the comments and observations of Governments[1] and the discussions held in the Sixth Committee at the fifty-ninth, sixty-third and sixty-sixth sessions of the General Assembly[2] on the question of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States, as well as on the advisability of elaborating a legal instrument on this question,

Taking note, in this regard, of the efforts made at the regional level towards the elaboration of a legal instrument on the avoidance of statelessness in relation to State succession,

1. *Reiterates its invitation* to Governments to take into account, as appropriate, the provisions of the articles contained in the annex to resolution 55/153, in dealing with issues of nationality of natural persons in relation to the succession of States;

2. *Once again encourages* States to consider, as appropriate, at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States;

3. *Emphasizes* the value of the articles in providing guidance to the States dealing with issues of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness;

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[1] A/59/180 and Add.1 and 2, A/63/113 and A/66/178 and Add.1.

[2] *Official Records of the General Assembly, Fifty-ninth Session, Sixth Committee*, 15th meeting (A/C.6/59/SR.15), and corrigendum; ibid., *Sixty-third Session, Sixth Committee*, 11th meeting (A/C.6/63/SR.11), and corrigendum; and ibid., *Sixty-sixth Session, Sixth Committee*, 15th meeting (A/C.6/66/SR.15), and corrigendum.

4. *Decides* that, upon the request of any State, it will revert to the question of nationality of natural persons in relation to the succession of States at an appropriate time, in the light of the development of State practice in these matters.

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Criminal accountability of United Nations officials and experts on mission

Report of the Sixth Committee

Rapporteur: Ms. Jacqueline Kemunto **Moseti** (Kenya)

I. Introduction

1. The item entitled "Criminal accountability of United Nations officials and experts on mission" was included in the provisional agenda of the sixty-sixth session of the General Assembly pursuant to Assembly resolution 65/20 of 6 December 2010.

2. At its 2nd plenary meeting, on 16 September 2011, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 9th, 27th and 29th meetings, on 7 October and on 2 and 9 November 2011. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/66/SR 9, 27 and 29).

4. For its consideration of the item, the Committee had before it the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission (A/66/174 and Add.1).

II. Consideration of draft resolution A/C.6/66/L.16

5. At the 27th meeting, on 2 November, the representative of Greece, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission" (A/C.6/66/L.16).

6. At its 29th meeting, on 9 November, the Committee adopted draft resolution A/C.6/66/L.16 without a vote (see para. 8).

7. At the same meeting, the representative of Switzerland spoke in explanation of position after the adoption of the draft resolution (see A/C.6/66/SR.29).

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III. Recommendation of the Sixth Committee

8. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Criminal accountability of United Nations officials and experts on mission

The General Assembly,

Recalling its resolution 59/281 of 29 March 2005, in which it endorsed the recommendation of the Special Committee on Peacekeeping Operations that the Secretary-General make available to the United Nations membership a comprehensive report on the issue of sexual exploitation and abuse in United Nations peacekeeping operations,[1]

Recalling also that the Secretary-General, on 24 March 2005, transmitted to the President of the General Assembly a report of his Adviser concerning sexual exploitation and abuse by United Nations peacekeeping personnel,[2]

Recalling further its resolution 59/300 of 22 June 2005, in which it endorsed the recommendation of the Special Committee on Peacekeeping Operations that a group of legal experts be established to provide advice on the best way to proceed so as to ensure that the original intent of the Charter of the United Nations can be achieved, namely that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, without due process,[3]

Recognizing the valuable contribution of United Nations officials and experts on mission towards the fulfilment of the purposes and principles of the Charter,

Reaffirming the need to promote and ensure respect for the principles and rules of international law,

Reaffirming also that the present resolution is without prejudice to the privileges and immunities of United Nations officials and experts on mission and the United Nations under international law,

Reaffirming further the obligation of United Nations officials and experts on mission to respect the national laws of the host State, as well as the right of the host State to exercise, where applicable, its criminal jurisdiction, in accordance with the relevant rules of international law and agreements governing operations of United Nations missions,

Deeply concerned by reports of criminal conduct, and conscious that such conduct, if not investigated and, as appropriate, prosecuted, would create the negative impression that United Nations officials and experts on mission operate with impunity,

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[1] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part one, chap. III, sect. D, para. 56.

[2] See A/59/710.

[3] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part two, chap. II, sect. N, para. 40 (a).

Reaffirming the need to ensure that all United Nations officials and experts on mission function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations,

Emphasizing that crimes committed by such persons are unacceptable and have a detrimental effect on the fulfilment of the mandate of the United Nations, in particular with respect to the relations between the United Nations and the local population in the host country,

Conscious of the importance of protecting the rights of victims of criminal conduct, as well as of ensuring adequate protection for witnesses, and recalling the adoption of its resolution 62/214 of 21 December 2007 on the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel,

Emphasizing the need to enhance international cooperation to ensure the criminal accountability of United Nations officials and experts on mission,

Recalling its resolution 61/29 of 4 December 2006, by which it established the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission,

Having considered at its previous sessions the report of the Group of Legal Experts established by the Secretary-General pursuant to its resolution 59/300[4] and the reports of the Ad Hoc Committee,[5] as well as the note by the Secretariat[6] and the reports of the Secretary-General[7] on criminal accountability of United Nations officials and experts on mission,

Recalling its resolutions 62/63 of 6 December 2007, 63/119 of 11 December 2008, 64/110 of 16 December 2009 and 65/20 of 6 December 2010,

Recalling also its decision that, bearing in mind its resolutions 62/63 and 63/119, the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat, shall be continued during its sixty-seventh session in the framework of a working group of the Sixth Committee,

Convinced of the continuing need for the United Nations and its Member States to urgently take strong and effective steps to ensure the criminal accountability of United Nations officials and experts on mission in the interest of justice,

1. *Takes note* of the report of the Secretary-General;[8]

2. *Strongly urges* States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under

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[4] See A/60/980.

[5] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54); and ibid., *Sixty-third Session, Supplement No. 54* (A/63/54).

[6] A/62/329.

[7] A/63/260 and Add.1, A/64/183 and Add.1 and A/65/185.

[8] A/66/174 and Add.1.

international law, and in accordance with international human rights standards, including due process;

3. *Strongly urges* all States to consider establishing, to the extent that they have not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State;

4. *Encourages* all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, the prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their domestic law and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes;

5. *Also encourages* all States:

(a) To afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials and experts on mission, including assistance in obtaining evidence at their disposal, in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;

(b) In accordance with their domestic law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations;

(c) In accordance with their domestic law, to provide effective protection for victims of, witnesses to and others who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access of victims to victim assistance programmes, without p ejudice to the rights of the alleged offender, including those relating to due process;

(d) In accordance with their domestic law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission;

6. *Requests* the Secretariat to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and be aware that certain conduct may amount to a crime for which they may be held accountable;

7. *Urges* the Secretary-General to continue to take such other practical measures as are within his authority to strengthen existing training on United

Nations standards of conduct, including through predeployment and in-mission induction training for United Nations officials and experts on mission;

8. *Reiterates* its decision that, bearing in mind its resolutions 62/63 and 63/119, the consideration of the report of the Group of Legal Experts, in particular its legal aspects,[4] taking into account the views of Member States and the information contained in the note by the Secretariat,[6] shall be continued during its sixty-seventh session in the framework of a working group of the Sixth Committee, and, for that purpose, invites further comments from Member States on that report, including on the question of future action;

9. *Requests* the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions;

10. *Urges* States to provide to the Secretary-General at the appropriate time information on their handling of the credible allegations brought to their attention by the Secretary-General in accordance with paragraph 9 above;

11. *Requests* the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations;

12. *Encourages* the United Nations, when allegations against United Nations officials or experts on mission are determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and the reputation of such officials and experts on mission;

13. *Urges* the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States;

14. *Emphasizes* that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission;

15. *Takes note with appreciation* of the information provided by Governments in response to its resolutions 62/63, 63/119, 64/110 and 65/20, and urges Governments to continue taking the measures necessary for the implementation of those resolutions, including their provisions addressing the establishment of jurisdiction over crimes, particularly those of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, as well as cooperation among States, and to provide specific details thereon, in particular with respect to

paragraph 3 of the present resolution, in the information provided to the Secretary-General;

16. *Reiterates its request* to the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the present resolution, in particular with respect to paragraphs 3, 5, 8 and 9 above, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat;

17. *Requests* the Secretary-General to include in his report information on the number and types of credible allegations and any actions taken by the United Nations and its Member States regarding crimes of a serious nature committed by United Nations officials and experts on mission, including information on efforts made to ensure the completeness of incident reporting;

18. *Decides* to include in the provisional agenda of its sixty-seventh session the item entitled "Criminal accountability of United Nations officials and experts on mission".